

SECTION XVII AQUIFER PROTECTION ORDINANCE

1. Authority and Purpose

Pursuant to RSA 674:16-21, the Town of Newton adopts an Aquifer Protection District and accompanying regulations in order to protect, preserve, and maintain the quality and quantity of existing and potential groundwater drinking supplies and related groundwater recharge areas within the Town.

2. Definitions

Animal Feedlot: A commercial agricultural establishment consisting of confined feeding areas and related structures used for the raising of livestock.

Aquifer: For the purpose of this Ordinance, aquifer means a geologic formation, group of formations, or part of a formation that is capable of yielding quantities of groundwater usable for municipal or public water supplies.

Dwelling Unit: A building or portion thereof containing one or more dwelling units, but not including hotels, motels, rooms or a boarding house, clubs, lodges, trailers, or structures solely for transient or overnight occupancy.

Groundwater: All the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

Groundwater Recharge: The infiltration of precipitation through surface soil materials into the groundwater. Recharge may also occur from surface waters, including lakes, streams and wetlands.

Leachable Wastes: Waste materials, including solid wastes, sludge and agricultural wastes capable of releasing contaminants to the surrounding environment.

Non-Conforming Use: Nonconforming means use of land, building or premise which is not a use permitted by the provisions of this ordinance for the district in which such land, building or premise is situated.

Recharge Area: The land surface area from which groundwater recharge occurs.

Site Coverage: That portion of the entire parcel or site, which, through the development of the parcel, is rendered impervious to groundwater infiltration.

Solid Waste: Any discarded or abandoned material including refuse, putrescible material, septage, or sludge, as defined by New Hampshire Solid Waste Rules He P 1901.03. Solid waste includes solid, liquid, semi-solid, or gaseous waste material.

Structure: Anything constructed or erected, the use of which demands its permanent location on the land, or anything attached to something permanently located on the land.

Toxic or Hazardous Materials: Any substance which poses an actual or potential hazard to water supplies or human health if such a substance were discharged to land or waters of the Town. Hazardous materials include volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis. Also included are pesticides, herbicides, solvents and thinners, and such other substances as defined in the NH Water Supply and Pollution Control Rules, Section Ws 410.04(1), in the NH Solid Waste Rules He-P 1901.3(v), and in the Code of Federal Regulations 40 CFR 261 as amended.

3. District Boundaries

a. Location

The Aquifer Protection District is defined as the area shown on the map entitled, "Aquifer Protection District", and is hereby adopted as part of the Town's Official Zoning Map. The Aquifer Protection District includes the area delineated by the groundwater mapping studies entitled, Lower Merrimack/Coastal Study as prepared by the U.S. Geological Survey in 1991 and found in the Newton Water Resource Management and Protection Program as Map 4. The Aquifer Protection District is an overlay district, which imposes additional requirements and restrictions to those of the underlying district. This district also delineates and protects recharge areas as well as the aquifers. In all cases, the more restrictive requirement(s) shall apply.

b. Appeals

Where the bounds of an identified aquifer or recharge area, as delineated, are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of a written appeal, the Planning Board shall suspend further action on development plans related to the area under appeal and shall engage, at the landowner's expense, a qualified hydrogeologist to prepare a report determining the proper location and extent of the aquifer and recharge area relative to the property in question.

4. Use Regulations

a. Minimum Lot Size

The minimum lot size within the Aquifer Protection District for each newly created lot shall be the same as allowed in the underlying zoning district. Larger lot sizes may be required depending on the soil-based lot sizing standards found within the Newton subdivision regulations.

b. Maximum Site Coverage

1. Within the Aquifer Protection District, no more than twenty percent (20%) of a single lot or building site may be rendered impervious to groundwater infiltration. To the maximum extent feasible, all runoff from impervious surfaces shall be recharged to the aquifer on-site. Recharge impoundments shall have vegetative cover for surface treatment and infiltration. Furthermore, the stormwater drainage plan shall provide for the removal of sediment, oil, gasoline, and all other toxic, hazardous and solid waste materials from impervious areas. This runoff may be treated by the use of treatment swales, oil/gas separators or other devices, prior to retention and percolation of the runoff. All such techniques shall be approved by the Planning Board.

2. Maximum impervious site coverage may exceed twenty percent (20%) provided that the following performance standards are met and the plans are approved by the Planning Board or its designated agent:

- a. The developer shall submit a stormwater drainage plan. Such a plan shall provide for the retention and percolation within the aquifer of all development generated stormwater runoff from a ten (10) year storm event, such that the post-development discharge volume to the aquifer is, at a minimum, equal to the pre-development discharge to the aquifer. Furthermore, the stormwater drainage plan shall provide for treatments required under ' b, 1.

c. Prohibited Uses

The following uses are prohibited within the Aquifer Protection Zone:

1. On-site disposal, storage, distribution, processing or recycling of toxic or hazardous materials or wastes including but not limited to all petroleum-based products.
2. Underground storage tanks except as regulated by the NH Water Supply and Pollution Control Commission and only limited to the private needs and use of the site itself, no distribution, storage, or off-site transfer of the materials is permitted. Storage tanks, if completely contained within basements, are permitted.
3. Dumping of snow carried from off-site or storage of snow and ice removal chemicals or salts.
4. Automotive uses including: Cars washes, service and repair shops, junk and salvage yards.
5. Laundry and dry cleaning establishments.
6. Industrial uses which discharge contact type wastes or any other toxic or hazardous waste on site.

d. Conditional Uses

1. The Planning Board may grant approval for those uses listed above in d, 1 only after it is determined that all of the following conditions have been met:
 - a. the use will not detrimentally affect groundwater quality, nor cause a significant long term reduction in the volume of water contained in the aquifer or in the storage capacity of the aquifer;
 - b. the use will discharge no wastewater on-site other than that typically discharged by domestic wastewater disposal systems;
 - c. the proposed use complies with all other applicable provisions of this Section.

- d. the land owner must prove that the standard of ' 4.d, 2(a) will be met and that provisions for continuous perpetual compliance are in place to insure protection of the aquifer and recharge area through substantial and credible evidence submitted to the Planning Board and reviewed in accordance with Site Plan Review process, including review of submitted materials by a qualified hydrogeologist, environmental engineer or other professional consultant. (Amended 2004).
2. All conditional uses shall be subject to inspections by the Building Inspector or other agent designated by the Selectmen. The purpose of these inspections is to ensure continued compliance with the conditions under which approvals were granted. Failure to insure and maintain constant compliance with this ordinance will result in revocation of the Conditional Use Permit in accordance with RSA 676:4-a.

e. Permitted Uses

The following activities may be permitted provided they are conducted in accordance within the intent of this Ordinance:

1. Any use permitted by the underlying district of the Zoning Ordinance, except as prohibited in 4.c or regulated by 4.d of this Article.
2. Maintenance, repair of any existing non-conforming use or structure, provided there is no increase in impermeable surface beyond that permitted in accordance with 4.b of this ordinance, further provided that there is no change or expansion in use that presents increased risk to detrimentally affect groundwater quality, nor cause a significant long term reduction in the volume of water.
3. Agricultural and forestry uses, provided that fertilizers, pesticides, manure and other leachables are used according to best management practices as prescribed by the Rockingham County Conservation District, if applicable. All said leachables must be stored under shelter.

f. Special Exception for Lots of Record

Upon application to the Board of Adjustment, a special exception shall be granted to permit the erection of a structure for a permitted use within the Aquifer Protection District on a non-conforming lot provided that all of the following conditions are found to exist:

1. The lot upon which an exception is sought was an official lot of record, as recorded with the Rockingham County Registry of Deeds, prior to the date on which this Section was posted and published in the Town.
2. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside of the Aquifer Protection District.
3. No reasonable and economically viable use of the lot can be made without the exception.

4. The design and construction of the proposed use will be consistent with the purpose and intent of this Section.

- g. Non-Conforming Uses

Any non-conforming use within the Aquifer Protection District shall comply with all applicable provisions of the Newton Zoning Ordinance (Non-Conforming Uses) except that no expansion shall be permitted.

5. Miscellaneous Provisions

- a. Location

Where the premises are partially outside of the Aquifer Protection Overlay Zone, potential pollution sources such as, but not limited to, on-site waste disposal systems shall be located outside and down gradient of the Zone to the extent feasible.

6. Administration

- a. Application and Interpretation

The provisions of the Aquifer Protection District shall be applied and interpreted by the Planning Board.

- b. Enforcement

The Board of Selectmen (or their duly designated agent) shall be responsible for the enforcement of the provisions and conditions of the Aquifer Protection District.